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December 8, 1995

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DEC - 8 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RE: **Ex Parte Contact - CC Docket No. 94-54**

Dear Mr. Caton:

Attached are letters from Randall S. Coleman, Vice President Regulatory Policy and Law, which were sent to the following Commission personnel at 12.30 P.M. on December 8th, 1995.

Ms. Michele C. Farquhar
Mr. James Casserly
Ms. Lisa Smith
Mr. John Nakahata
Mr. James Coltharp
Mr. James Schlichting

Ms. Regina Keeney
Mr. Todd Silbergeld
Ms. Lauren Belvin
Mr. Richard Welch
Ms. Jackie Chorney

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of these letter and their attachments are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,


Robert F. Roche

Attachments

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List ABCDE

021



**Building The
Wireless Future.**

December 8, 1995

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Randall S. Coleman
Vice President for
Regulatory Policy and La

BY HAND DELIVERY

Mr. James Casserly
Senior Legal Advisor
to Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554-0001

RECEIVED

DEC - 8 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**Re: Ex Parte Presentation
CC Docket No. 94-54**

Dear Jim:

I have attached information, all of which has already been placed in the record of the referenced proceeding, which addresses the issue of whether a "bill and keep" arrangement between local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) providers could be construed to be a regulatory taking of local exchange carrier property. For your convenience, I have flagged the portions of the attached information that address that issue specifically.

Essentially, these materials show that:

- A "bill and keep" policy, which is equivalent to mutual compensation with a zero price for compensation, is economically efficient if either of two conditions are met: (1) traffic is approximately balanced in each direction, or (2) the actual costs are very low so that there is very little difference between a cost based rate and a zero rate. This second condition is met in the case of LEC-CMRS interconnection, given that the LEC incremental cost of terminating traffic of a competitor has been estimated to be approximately 0.2 cents/minute. See Gerald W. Brock, "Incremental Cost of Local Usage," March 16, 1995, at 2.
- In considering whether a "bill and keep" arrangement constitutes a taking for Fifth Amendment purposes, courts can be expected to look at three factors: (1) the economic impact of the regulation, (2) interference with investment-backed expectations, and (3) the character of the governmental action. The first factor generally requires that the property be rendered worthless. The second factor cannot be sustained by a mere

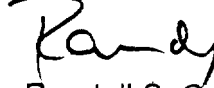
loss of anticipated profits. The third factor refers to a physical invasion of property. Thus, consideration of these three factors in the case of a "bill and keep" arrangement between LECs and CMRS providers does not lead to a conclusion that a taking would occur. See Cox Enterprises, Inc. Responses to LEC Argument Against "Bill and Keep," at 3.

- "Bill and keep is not a system of interconnection for free. Bill and keep is compensatory. There is a reciprocal exchange of traffic in which each company receives something of value." *Washington Utilities and Transportation Commission, et al V. U S WEST Communications, Inc.*, Docket Nos. UT-941464, UT-941465, UT-950146 and UT-950265, at 35.
- "[B]ill and keep is more consistent with the structure of cost occurrence than are the access charges that the incumbents [LECs] propose. The reason that local exchange services are flat rated is that most of the cost of local service is not sensitive with traffic volume but is related to access to the public switched network. The principal cost of terminating calls relates to the provision of the line to the subscriber's premise. The cost of this line is largely insensitive to the volume of and duration of calling. Even end-office switching costs have a large non-traffic sensitive component. It is simply wrong to suggest that the bill and keep procedure means that calls are being terminated 'for free.' The termination function is paid for, not by the originating company, but by the end-use customer in his flat monthly charge. This charge covers all access to and from the public switched network. Under bill and keep, a company is fully compensated for most call terminations by its own customer." *Id.* at 35-36.
- "That bill and keep is a fair compensation method is evident from the fact that it is the dominant current practice between adjacent LECs around the country . . . for terminating local (EAS) [Extended Area Service] traffic between adjacent exchanges. Where there is no gain to be achieved from anticompetitive or inefficient behavior, companies have elected bill and keep because of its inherent simplicity and efficiencies. As Dr. Zepp stated: 'This intercompany compensation method has been used . . . to establish intercompany compensation between local co-carriers who are neighbors. It is just as appropriate for local co-carriers who are competitors.'" *Id.* at 36.

It must be noted also that a bill and keep system between LECs and CMRS providers is in place today, however, in one direction only. CMRS providers pay to have their traffic terminated by LECs, but LECs do not compensate CMRS providers for their termination of LEC-originated traffic. So far I am not aware of any parties claiming that today's arrangement is confiscatory.

Please call me or Mike Altschul if you have questions on this information.

Sincerely,

A handwritten signature in black ink that appears to read "Randy". The signature is fluid and cursive, with a large initial 'R' and a trailing 'y'.

Randall S. Coleman

Attachments



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December 8, 1995

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

BY HAND DELIVERY

Mr. Todd Silbergeld
Legal Advisor to Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554-0001

**Re: Ex Parte Presentation
CC Docket No. 94-54**

Dear Todd:

I have attached information, all of which has already been placed in the record of the referenced proceeding, which addresses the issue of whether a "bill and keep" arrangement between local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) providers could be construed to be a regulatory taking of local exchange carrier property. For your convenience, I have flagged the portions of the attached information that address that issue specifically.

Essentially, these materials show that:

- A "bill and keep" policy, which is equivalent to mutual compensation with a zero price for compensation, is economically efficient if either of two conditions are met: (1) traffic is approximately balanced in each direction, or (2) the actual costs are very low so that there is very little difference between a cost based rate and a zero rate. This second condition is met in the case of LEC-CMRS interconnection, given that the LEC incremental cost of terminating traffic of a competitor has been estimated to be approximately 0.2 cents/minute. See Gerald W. Brock, "Incremental Cost of Local Usage," March 16, 1995, at 2.
- In considering whether a "bill and keep" arrangement constitutes a taking for Fifth Amendment purposes, courts can be expected to look at three factors: (1) the economic impact of the regulation, (2) interference with investment-backed expectations, and (3) the character of the governmental action. The first factor generally requires that the property be rendered worthless. The second factor cannot be sustained by a mere loss of anticipated profits. The third factor refers to a physical invasion of

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Please call me or Mike Altschul if you have questions on this information.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Coleman", with a stylized flourish at the end.

Randall S. Coleman

Attachments



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December 8, 1995

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

BY HAND DELIVERY

Ms. Lisa Smith
Senior Legal Advisor to Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554-0001

**Re: Ex Parte Presentation
CC Docket No. 94-54**

Dear Lisa:

I have attached information, all of which has already been placed in the record of the referenced proceeding, which addresses the issue of whether a "bill and keep" arrangement between local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) providers could be construed to be a regulatory taking of local exchange carrier property. For your convenience, I have flagged the portions of the attached information that address that issue specifically.

Essentially, these materials show that:

- A "bill and keep" policy, which is equivalent to mutual compensation with a zero price for compensation, is economically efficient if either of two conditions are met: (1) traffic is approximately balanced in each direction, or (2) the actual costs are very low so that there is very little difference between a cost based rate and a zero rate. This second condition is met in the case of LEC-CMRS interconnection, given that the LEC incremental cost of terminating traffic of a competitor has been estimated to be approximately 0.2 cents/minute. See Gerald W. Brock, "Incremental Cost of Local Usage," March 16, 1995, at 2.
- In considering whether a "bill and keep" arrangement constitutes a taking for Fifth Amendment purposes, courts can be expected to look at three factors: (1) the economic impact of the regulation, (2) interference with investment-backed expectations, and (3) the character of the governmental action. The first factor generally requires that the property be rendered worthless. The second factor cannot be sustained by a mere loss of anticipated profits. The third factor refers to a physical invasion of

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Please call me or Mike Altschul if you have questions on this information.

Sincerely,

A handwritten signature in cursive script that reads "Randy".

Randall S. Coleman

Attachments



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December 8, 1995

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Randall S. Coleman
Vice President for
Regulatory Policy and Law

BY HAND DELIVERY

Ms. Lauren Belvin
Senior Legal Advisor
to Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554-0001

**Re: Ex Parte Presentation
CC Docket No. 94-54**

Dear Pete:

I have attached information, all of which has already been placed in the record of the referenced proceeding, which addresses the issue of whether a "bill and keep" arrangement between local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) providers could be construed to be a regulatory taking of local exchange carrier property. For your convenience, I have flagged the portions of the attached information that address that issue specifically.

Essentially, these materials show that:

- A "bill and keep" policy, which is equivalent to mutual compensation with a zero price for compensation, is economically efficient if either of two conditions are met: (1) traffic is approximately balanced in each direction, or (2) the actual costs are very low so that there is very little difference between a cost based rate and a zero rate. This second condition is met in the case of LEC-CMRS interconnection, given that the LEC incremental cost of terminating traffic of a competitor has been estimated to be approximately 0.2 cents/minute. See Gerald W. Brock, "Incremental Cost of Local Usage," March 16, 1995, at 2.
- In considering whether a "bill and keep" arrangement constitutes a taking for Fifth Amendment purposes, courts can be expected to look at three factors: (1) the economic impact of the regulation, (2) interference with investment-backed expectations, and (3) the character of the governmental action. The first factor generally requires that the property be rendered worthless. The second factor cannot be sustained by a mere

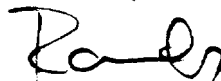
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Sincerely,

A handwritten signature in black ink, appearing to read "Randall S. Coleman". The signature is stylized with a large initial "R" and a cursive "S".

Randall S. Coleman

Attachments



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December 8, 1995

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BY HAND DELIVERY

Mr. John Nakahata
Legal Advisor to Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554-0001

Re: ***Ex Parte* Presentation**
CC Docket No. 94-54

Randall S. Coleman
Vice President for
Regulatory Policy and Law

Dear John:

I have attached information, all of which has already been placed in the record of the referenced proceeding, which addresses the issue of whether a "bill and keep" arrangement between local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) providers could be construed to be a regulatory taking of local exchange carrier property. For your convenience, I have flagged the portions of the attached information that address that issue specifically.

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Please call me or Mike Altschul if you have questions on this information.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall S. Coleman". The signature is written in a cursive, flowing style.

Randall S. Coleman

Attachments

December 8, 1995



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Randall S. Coleman
Vice President for
Regulatory Policy and Law

BY HAND DELIVERY

Ms. Michele Farquhar
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554-0001

**Re: Ex Parte Presentation
CC Docket No. 94-54**

Dear Michele:

I have attached information, all of which has already been placed in the record of the referenced proceeding, which addresses the issue of whether a "bill and keep" arrangement between local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) providers could be construed to be a regulatory taking of local exchange carrier property. For your convenience, I have flagged the portions of the attached information that address that issue specifically.

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Please call me or Mike Altschul if you have questions on this information.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall S. Coleman", written over the printed name.

Randall S. Coleman

Attachments

cc: James Coltharp
Jackie Chorney

December 8, 1995



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Randall S. Coleman
Vice President for
Regulatory Policy and Law

BY HAND DELIVERY

Mr. Richard Welch
Legal Advisor to Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554-0001

**Re: *Ex Parte* Presentation
CC Docket No. 94-54**

Dear Richard:

I have attached information, all of which has already been placed in the record of the referenced proceeding, which addresses the issue of whether a "bill and keep" arrangement between local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) providers could be construed to be a regulatory taking of local exchange carrier property. For your convenience, I have flagged the portions of the attached information that address that issue specifically.

Essentially, these materials show that:

- A "bill and keep" policy, which is equivalent to mutual compensation with a zero price for compensation, is economically efficient if either of two conditions are met: (1) traffic is approximately balanced in each direction, or (2) the actual costs are very low so that there is very little difference between a cost based rate and a zero rate. This second condition is met in the case of LEC-CMRS interconnection, given that the LEC incremental cost of terminating traffic of a competitor has been estimated to be approximately 0.2 cents/minute. See Gerald W. Brock, "Incremental Cost of Local Usage," March 16, 1995, at 2.
- In considering whether a "bill and keep" arrangement constitutes a taking for Fifth Amendment purposes, courts can be expected to look at three factors: (1) the economic impact of the regulation, (2) interference with investment-backed expectations, and (3) the character of the governmental action. The first factor generally requires that the property be rendered worthless. The second factor cannot be sustained by a mere loss of anticipated profits. The third factor refers to a physical invasion of

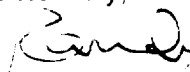
property. Thus, consideration of these three factors in the case of a "bill and keep" arrangement between LECs and CMRS providers does not lead to a conclusion that a taking would occur. See Cox Enterprises, Inc. Responses to LEC Argument Against "Bill and Keep," at 3.

- "Bill and keep is not a system of interconnection for free. Bill and keep is compensatory. There is a reciprocal exchange of traffic in which each company receives something of value." *Washington Utilities and Transportation Commission, et al V. U S WEST Communications, Inc.*, Docket Nos. UT-941464, UT-941465, UT-950146 and UT-950265, at 35.
- "[B]ill and keep is more consistent with the structure of cost occurrence than are the access charges that the incumbents [LECs] propose. The reason that local exchange services are flat rated is that most of the cost of local service is not sensitive with traffic volume but is related to access to the public switched network. The principal cost of terminating calls relates to the provision of the line to the subscriber's premise. The cost of this line is largely insensitive to the volume of and duration of calling. Even end-office switching costs have a large non-traffic sensitive component. It is simply wrong to suggest that the bill and keep procedure means that calls are being terminated 'for free.' The termination function is paid for, not by the originating company, but by the end-use customer in his flat monthly charge. This charge covers all access to and from the public switched network. Under bill and keep, a company is fully compensated for most call terminations by its own customer." *Id.* at 35-36.
- "That bill and keep is a fair compensation method is evident from the fact that it is the dominant current practice between adjacent LECs around the country . . . for terminating local (EAS) [Extended Area Service] traffic between adjacent exchanges. Where there is no gain to be achieved from anticompetitive or inefficient behavior, companies have elected bill and keep because of its inherent simplicity and efficiencies. As Dr. Zepp stated: 'This intercompany compensation method has been used . . . to establish intercompany compensation between local co-carriers who are neighbors. It is just as appropriate for local co-carriers who are competitors.'" *Id.* at 36.

It must be noted also that a bill and keep system between LECs and CMRS providers is in place today, however, in one direction only. CMRS providers pay to have their traffic terminated by LECs, but LECs do not compensate CMRS providers for their termination of LEC-originated traffic. So far I am not aware of any parties claiming that today's arrangement is confiscatory.

Please call me or Mike Altschul if you have questions on this information.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall S. Coleman", written over a horizontal line.

Randall S. Coleman

Attachments

September 27, 1995

COMCAST CORPORATION
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Commission policy recognized CMRS providers as co-carriers with LECs. The Commission, therefore, adopted the principle of mutual compensation.

LECs have not implemented meaningful mutual compensation in cellular and without further direction from the Commission are not likely to adopt it for PCS.

Therefore, the Commission must adopt a specific, pro-competitive structural solution.

Bill and keep is the best alternative for a number of policy, business and economic reasons.

Bill and Keep

- ◆ will fairly compensate LECs and CMRS providers;
- ◆ is economically efficient (LEC incremental cost of terminating traffic is de minimis);
- ◆ is administratively simple (no new billing, or accounting systems are required);
- ◆ can be implemented without delay (no need for cost studies);
- ◆ will promote competition and a network of networks by promoting interconnection; and
- ◆ will limit the extension of LEC monopoly power into wireless markets.

COX ENTERPRISES, INC.
INTERCONNECTION AND LOCAL TELEPHONE COMPETITION

There are three key steps that must be taken before any facilities-based competition can develop in the local telephone marketplace: laws and regulations preventing entry by new competitors must be eliminated, fully functional telephone number portability must be implemented and fair terms and conditions for interconnection must be established. Two of these matters currently are being resolved. First, many states are removing formal entry barriers and pending Federal Legislation, on the verge of enactment, will preempt such barriers altogether. Second, the Commission recently issued a Notice of Proposed Rulemaking to assure that fully functional number portability will be a reality. Now the Commission should take the third and perhaps most important step by ensuring that all new local exchange entrants have access to interconnection with other carriers on reasonable terms. This paper describes why reasonable interconnection is vital to new entrants, why the Commission should adopt a "bill and keep" model for interconnection between competitors in the local exchange marketplace and why the Commission should act promptly.

Interconnection Is Vital to New Entrants

Interconnection is the connection and interchange of traffic between two carriers. Interconnection literally provides the link between the existing telephone network and the network of a new entrant. Without interconnection, new entrants will be unable to connect calls between their customers and customers of other carriers. Interconnection is not, however, a new idea. Incumbent telephone companies interconnect with each other throughout the country and have done so for years.

The Commission consistently has recognized the importance of interconnection in other contexts, such as its expanded interconnection and cellular interconnection proceedings. Regrettably, these proceedings have shown that incumbents have significant incentives to use the terms and conditions of interconnections to make it harder for competitors to survive. For instance, the Commission suspended *every single* incumbent telephone company's initial expanded interconnection tariff filing because those tariffs contained oppressive terms and conditions. For more than a decade, cellular carriers have had to fight tooth and nail to obtain interconnection that met their technical requirements. Controversies in this area still remain. There is no reason to think that companies in direct competition with existing telephone local loops will be treated any better. Therefore, interconnection issues cannot be left to the "good faith" of the marketplace: regulatory intervention inevitably will be required.

The Commission Should Adopt "Bill and Keep" Compensation for Interconnection

One way that telephone companies have created barriers to entry is by charging inflated rates for interconnection. Cellular customers have extremely high monthly charges, in large part, because local exchange carriers often charge an order of magnitude more for cellular interconnection than their incremental costs. This pattern has continued as local competition has begun to emerge. For instance, Bell Atlantic recently proposed to adopt its current switched access charge as the rate for local interconnection in Virginia. At this rate, new local loop competitors simply will not enter the market because they will never earn any profit. A much better alternative to LEC-imposed, punitive interconnection rates, or even to rates negotiated between LECs and new entrants, is for regulators to adopt the "bill and keep" model for interconnection compensation. This model already has been adopted in California and in Iowa and recommended in Pennsylvania.

Under bill and keep, each carrier terminates the local traffic delivered to it by other carriers with which it interconnects and keeps the revenue from local traffic it delivers to other carriers as compensation for its efforts. Bill and keep also can be thought of as mutual and reciprocal compensation for interconnection, with a charge of 0 cents per minute.

Using a bill and keep approach does not harm incumbent local exchange carriers because the incremental cost of terminating traffic across networks is *de minimis*, even when traffic is not balanced. A white paper submitted by Cox to the Commission used studies commissioned by the telephone companies to demonstrate that the incremental cost of terminating traffic, on average, is about 0.2 cents per minute. See Gerald W. Brock, *Incremental Cost of Local Usage*. (Copies of this paper and several other papers on interconnection issues are attached.) This tiny cost is undoubtedly smaller than the cost of installing and using the hardware and software needed to count and then bill for exchanged traffic.

A bill and keep approach also ensures that new entrants will be able to enter the market and compete for customers. As the attached paper by Teleport Communications Group demonstrates, unless interconnection rates for terminating traffic are *de minimis*, a new entrant simply will not be able to afford to offer competing local telephone service.

High interconnection charges also create economic distortions. Under bill and keep, a carrier has an incentive to seek all customers, regardless of how many calls they make or receive. This is not true if there are explicit charges for interconnection. Indeed, the higher the interconnection charge, the more competitive carriers will seek customers, such as Pizza Hut, who make very few calls and who receive many calls, and the more competitive carriers will shun customers who make more calls than they receive. This will occur because terminating calls will be more profitable than originating them.